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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

OLD REPUBLIC INSURANCE COMPANY, a corporation, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	Case No. 08-CV-223 DEFENDANT'S ANSWER WITH AFFIRMATIVE AND OTHER DEFENSES

Defendant United States of America ("United States"), by its undersigned attorneys, answers Plaintiff's Complaint, on information and belief, as follows:

AS TO JURISDICTION AND VENUE

1. The allegations contained in paragraph 1 constitute conclusions of law to which no response is necessary. To the extent a response is deemed necessary, however, the allegations are denied.

2. Deny paragraph 2, except admit that employees of the United States working at Gillespie Field Air Traffic Control Tower ("Gillespie Tower"), El Cajon, California, and the

Southern California Terminal Radar Approach Control ("SoCal TRACON") facility, San Diego, California, were acting within the scope of their employment at the time of the accident.

3. Admit the allegations of paragraph 3.

4. Admit the allegations of paragraph 4.

5. The allegations in paragraph 5 are directed against defendant(s) other than the United States. To the extent the allegations are deemed to be directed against the United States, the allegations are denied.

6. The allegations in paragraph 6 are directed against defendant(s) other than the United States. To the extent the allegations are deemed to be directed against the United States, the allegations are denied.

AS TO GENERAL ALLEGATIONS

7. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. The allegations contained in paragraph 9 constitute conclusions of law to which no response is necessary. To the extent a response is deemed necessary, however, the allegations are denied.

10. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Admits the allegations of paragraph 11, except to deny the characterization that N9531B "was struck in midair by a Cessna 182." Additionally, deny knowledge and information sufficient to form a belief as to the truth of the allegations concerning the employment status of Anders Olof Sigurdson at the time of his death.

AS TO FIRST CLAIM AGAINST
DEFENDANT UNITED STATES FOR NEGLIGENCE

12. Defendant United States incorporates by reference as if set forth in full herein its answers to paragraphs 1 through 11, above.

13. Deny paragraph 13, except admit, on information and belief, that Federal Aviation Administration ("FAA") air traffic control personnel located at the SoCal TRACON, at the time of the accident, were providing air traffic control services to N9531B.

14. Deny paragraph 14, except admit, on information and belief, that at certain times FAA air traffic control personnel located at Gillespie Tower were providing air traffic control services to N9351B. Additionally, the United States incorporates by reference as if set forth in full herein its answer to Paragraph 13, above.

15. Admit that employees of the United States working at Gillespie Tower and the SoCal TRACON were acting within the scope of their employment at the time of the accident. Deny all other allegations in paragraph 15.

16. Deny the allegations of paragraph 16. Additionally, deny each and every subparagraph, a through i, inclusive.

17. Admit that Anders Olof Sigurdson died in the accident, except deny that his death was the result of any negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her office or employment. Deny knowledge and information sufficient to form a belief as to the truth of the remaining allegations in the paragraph.

AS TO SECOND CLAIM FOR RELIEF FOR NEGLIGENCE
PER SE AGAINST DEFENDANT UNITED STATES OF AMERICA

18. Defendant United States incorporates by reference as if set forth in full herein its answers to paragraphs 1 through 17, above.

19. Deny the allegations of paragraph 19.

20. Admit that Anders Olof Sigurdson died in the accident, except deny that his death was the result of any negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her office or employment. Deny knowledge and information sufficient to form a belief as to the truth of the remaining allegations in the paragraph.

21. The "wherefore" clause of the Complaint, including subparagraph 1 through 5, inclusive, does not require a response, however, Defendant United States denies that Plaintiffs are entitled to any relief against it. Additionally, Plaintiffs' damages, if any, are limited to the amount claimed administratively under the Federal Tort Claims Act. 28 U.S.C. § 2675(b). Plaintiffs are not entitled to pre-judgment interest. 28 U.S.C § 2674. Plaintiffs are not entitled to "other and further relief." 28 U.S.C. § 1346(b)(1).

AFFIRMATIVE AND OTHER DEFENSES

First Defense

Plaintiff's Complaint fails to state a claim on which relief may be granted.

Second Defense

The Court lacks subject matter jurisdiction over claims barred by 28 U.S.C. § 2680(a).

Third Defense

If Plaintiff was or might be injured as alleged in its Complaint, which injuries are not admitted but are specifically denied, the injuries were caused in whole or in part by the negligent acts or omissions of Anders Olof Sigurdson, for whose acts or omissions the United States is not liable or responsible.

Fourth Defense

If Plaintiff was or might be injured as alleged in Plaintiffs' Complaint, which injuries are not admitted but are specifically denied, the injuries were caused in whole or in part by the negligent acts or omissions of others, for whose acts or omissions the United States is not liable or responsible.

Fifth Defense

In the event the United States is found to be negligent, which negligence the United States specifically denies, the negligence of Anders Olof Sigurdson, contributed to and/or caused their damages, and any recovery must be proportionately reduced.

Sixth Defense

To the extent that Plaintiff's alleged damages were caused in whole or in part by the negligence of parties other than the United States, and should the United States be found in any way liable in this matter, the United States' liability for Plaintiff's damages, if any, should be allocated to the United States in direct proportion to the United States' percentage of fault, if any.

Seventh Defense

Should the United States be found liable to any of Plaintiff, which liability is expressly denied, the United States is entitled to contribution and/or indemnity from others over whom it had no control, including but not limited to Anders Olof Sigurdson.

Eighth Defense

Plaintiffs' damages, if any, have been caused at least in part by Anders Olof Sigurdson's failure to mitigate damages.

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WHEREFORE, the United States prays that Plaintiff Old Republic Insurance Company take nothing by reason of its suit herein, that judgment be rendered in favor of Defendant United States of America, for costs of suit herein incurred, and for such other and further relief as this court may deem proper.

DATED: April 11, 2008

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/s/ Stephen M. Ketyer
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 11, 2008, a true and correct copy of the Defendant's Answer to Plaintiff's Complaint with Affirmative and Other Defenses, was filed electronically and will be served via Notice of Electronic Filing under the court's CM/ECF system and/or by USPS First Class mail, postage pre-paid, addressed to the following counsel of record:

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